IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.5027 OF 2006.
IN
FIRST APPEAL NO.3117 OF 2006.

Mrs.Lata Gajanan Pai. ... Applicant.
Versus.
1(a). Smt.Sudha Shridatta Dharmadkar
and others. ... Respondents.

Mrs.A.S.Malvankar for the Applicant.

Shri N.V.Moye for the Respondents Nos.1(a), 1(b) and 1(d).

CORAM : ABHAY S.OKA, J.

DATED : 2nd March, 2007.

P.C.:

1. Heard the Advocate for the Applicant and the learned Advocate for the Respondents Nos.1(a), 1(b) and 1(d). A decree for possession in respect of a residential flat has been passed in favour of the Respondents/Plaintiffs. As the First Appeal is admitted for final hearing, execution of the decree for possession will have to be stayed.

2. It must be noted here that the trial Court has recorded a finding that the present Appellant has no right to occupy the suit flat. It is an admitted position that from January 1992 the monthly outgoings in respect of the flat and non-occupancy charges are being paid by the Respondents to the Cooperative Society in which the flat is situated. While passing the decree, the learned trial Judge has directed an enquiry to be

held for determination of mesne profits. From January 1992, the Appellant is residing in the flat free of cost and that no occupancy charges or compensation is being paid by the Applicant to the Respondents. As the decree for possession is being stayed, as a condition for grant of stay, the Applicant/Appellant will have to deposit the arrears of monthly outgoings and non-occupancy charges in respect of the flat payable from 1st January 1992. There is some dispute between the parties as regards total arrears. However, going by calculation of the Applicant, the amount of arrears upto end of March 2007 can be taken to be Rs.1,05,000/-. The Applicant will have to pay a reasonable amount by way of occupancy charges. As of today, the market value of the suit flat will not be less than Rs.25,00,000/-. Taking an overall view of the matter, the occupancy charges/compensation at the rate of Rs.1000/- per month will have to be deposited by the Applicant/Appellant as a condition for grant of stay.

3. The Advocate for the Applicant states that today the Applicant is ready and willing to deposit a sum of Rs.50,000/- in this court towards the arrears of society charges. The statement is accepted.

4. The Civil Application is disposed of by the following order:

(a) There will be interim relief in terms of prayer clause (a) subject to following conditions:

(i) The Applicant will deposit with this Court a sum of Rs.50,000/- towards the arrears of maintenance charges and non-occupancy charges payable to the society with effect from Janary 1992 within a period of two weeks from today;

(ii) The Applicant will deposit with this Court a further amount of Rs.55,000/- towards the arrears of maintenance charges and non-occupancy charges for the period from January 1992 till March 2007 within a period of one month from today;

(iii) The Applicant will deposit with this Court arrears of compensation at the rate of Rs.1000/- per month from January 1992 till the end of March 2007 within a period of six months from today;

(iv) The Applicant will keep on depositing with this Court a sum of Rs.1000/- on or before 10th of each and every calender

month from April 2007 onwards till disposal of the Appeal;

(v) If the Applicant fails to deposit the arrears of charges payable to the society and arrears of compensation as aforesaid within the stipulated time, the interim relief granted will stand vacated without further reference to the Court;

(b) The Respondents will be entitled to withdraw the total amount of Rs.1,05,000/- deposited by the Applicant towards the charges payable to the society. The withdrawal will be without prejudice to the rights and contentions of both the parties and subject to the final outcome of the Appeal.

(c) The Respondents will be entitled to withdraw the amount deposited by the Applicant on account of arrears of monthly compensation and the monthly compensation to be paid from April 2007 onwards subject to giving an undertaking to this Court to redeposit the amounts with appropriate rate of interest in case the Applicant succeeds in the Appeal.

(d) It is made clear that in case the Applicant does not succeed in the Appeal, the amounts which are withdrawn by the Respondents will be subject to adjustment against the claim of the Respondents towards mesne profits.

(e) The grant of stay will be subject to further condition of the Applicant depositing with the society the monthly outgoings, non-occupancy charges and all other charges payable in respect of the suit flat regularly and punctually on behalf of the Respondents. It is obvious that the payment of the said amount by the Applicant to the society will be without prejudice to the rights and contentions of both the parties.

(f) There will be no order as to costs.

(g) The parties to act on an authenticated copy of this order.

Judge.